

# EXECUTIVE BRANCH ETHICS ACT TRAINING

**AMHTA**

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MATT STINSON

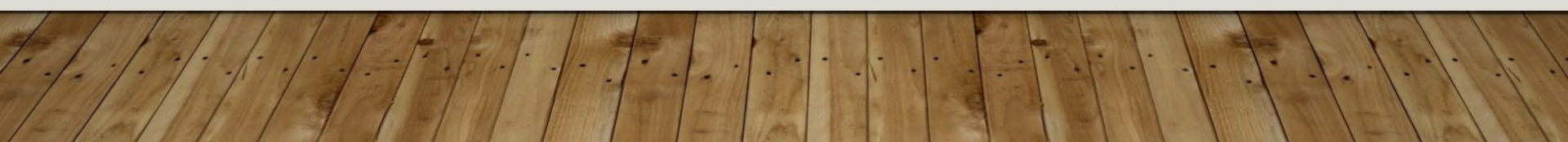
OPINION, APPEALS, AND ETHICS SECTION

DEPARTMENT OF LAW

# PUBLIC OFFICER

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- A public employee
- A member of a board or commission
- *YOU*



# MISUSE OF OFFICIAL POSITION

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- The Grand-daddy of them all.
- AS 39.52.120

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# MISUSE OF OFFICIAL POSITION



Can't use position for *personal gain*, or to give *unwarranted benefit or treatment* to another person; (*hiring a friend who is unqualified*);



Can't use your position to secure other employment or contracts; (*I'll do this for you if you give me a job when I leave*);



Can't use your position to accept or solicit outside compensation; (*no tips for doing your job*).

# MISUSE OF OFFICIAL POSITION

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- Can't use state resources to benefit a personal or financial interest, and
- Can't take or withhold official action on matters in which you have a personal or financial interest, unless...
- It's an *insignificant interest (less than \$5,000 in a business)*, or interest possessed generally by *public at large*, or action would have *insignificant or conjectural effect* on the matter.

# BASIC PREMISE – CONFLICTS OF INTEREST

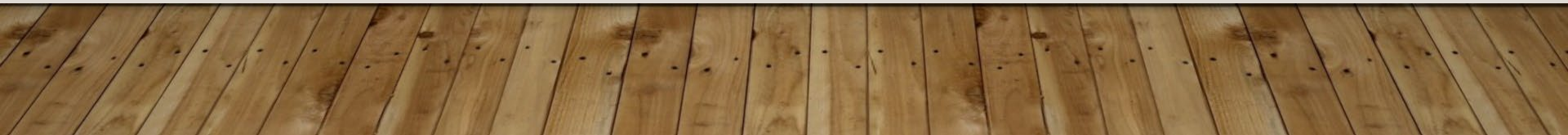
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- Avoid substantial and material conflicts of interest.
  - The basic premise of the Act.
- You and your immediate family members may not benefit financially or personally from your position and actions as a state officer.
- You may not confer unwarranted benefits on others.

# \$\$ FINANCIAL INTEREST \$\$

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- An interest held by *you or an immediate family member* which includes *involvement or **ownership in a business***, including property, or a professional or private relationship that is *the **source of income*** or from which you have received or expect to receive income.
- Also means ***holding a position*** in a business, such as officer, director, trustee, partner, employee, or a position of management.



# PERSONAL INTEREST

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- An interest held by *you or your immediate family*, including **membership** in any organization – fraternal, nonprofit, charitable, for profit, political – from which you **derive a benefit**.
- **“Membership” broad definition: not just voting member, even advisory, on the rolls.**



# BENEFIT

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- ***Anything that is to your advantage or self-interest***, or from which you gain financially, including dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan, promise to pay, grant, contract, lease, money, goods, services, privileges, patronage, advantage, advancement, or anything else of value.
- Very broad definition: ***If you like it, it's a benefit.***

# IMMEDIATE FAMILY MEMBER

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- Spouse
- Cohabiting Conjugal partner
- Children, step-children
- Parents, siblings, grandparents, aunts, uncles
- Parents-in-law, brother and sister-in-law
- *That's your family*



# OFFICIAL ACTION

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- Giving advice, *participating*, assisting, making a *recommendation*, making a decision, approving, disapproving, voting, or other similar action by a public officer.



# HOWEVER...

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- The Act does recognize that *independent pursuits should not be discouraged.*
- Public officers are pulled from society.
- *Some minor and inconsequential conflicts of interest are unavoidable.*
- *Such as....*



# STOCKS AND BONDS

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- If your ownership interest or value in a company is less than \$5,000, it is presumed to be insignificant.



# HELD BY LARGER CLASS OF PERSONS

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- Your personal or financial interest in a matter is also presumed to be insignificant if it is held generally by the public at large, or by a larger class of persons.
- Example: PFD



# INSIGNIFICANT OR CONJECTURAL

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- If your action or influence would have insignificant or merely conjectural effect on a matter, the conduct is not prohibited.
- Example: using work phone to check on babysitter or make a personal call. (But not managing your rental unit.)
- *Mere appearance of impropriety not enough, needs to be an actual conflict.*

# GIFTS

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- Can't accept or solicit a gift if that gift is intended to influence your action or judgment in your official duties.
- Gifts are money, services, loans, travel, entertainment, hospitality, lunch, a place to stay, tickets to an event....





# GIFTS

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- All gifts from lobbyists are presumed to be improper (unless they are an immediate family member, or long-time family friend...but even that is risky.)



# GIFTS

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- A gift worth more than \$150 to you or your immediate family must be reported if:
- You could take official action that would affect the gift-giver, or
- The gift is being given to you because of your position as a public employee.

# GIFTS

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- A gift of an amount less than \$150 should still be disclosed if one could “reasonably infer from the circumstances” that the gift was intended to influence your action or judgment.
- When in doubt, DISCLOSE!

# GIFTS

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- Any gift received from another government, regardless of value, must be disclosed. This includes foreign, federal, state, municipal, and tribal governments.



# GIFTS, ETHICS ACT, FAMILY

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- You must report a gift that a family member receives if it would be reportable if you received it.



# INFORMATION

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- AS 39.52.140
- A ***current or former public officer*** may not disclose or use information gained in the course of official duties that could in any way result in a benefit to the officer or their immediate family member, if the information ***has not been publicly disseminated***, or is ***confidential by law***.

# NON-PUBLIC AND CONFIDENTIAL INFORMATION

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- It is only publicly disseminated if follows 9 AAC 52.070:
- Newspaper, broadcast, press release, newsletter, legal notice, non-confidential court filing, published report, agency's website, Alaska Online Public Notice System, public speech, public testimony.



- NOT just if discoverable under FOIA request.

# POST STATE EMPLOYMENT, 39.52.180

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- After leaving state service
- **Two-year restriction** on
- A **matter**
- For **compensation**
- In which you **participated personally and substantially**
- Through the exercise of **official action**
- *(each phrase subject to interpretation and analysis; all must be met)*



# WHAT'S THE MATTER?

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- “**Matter**” includes case, proceeding, application, contract, determination, proposal or consideration of a legislative bill, a resolution, a constitutional amendment, or other legislative measure, or proposal, consideration, or adoption of an administrative regulation. AS 39.52.180(a)
- “Matter” does not include the general formulation of policy. 9 AAC 52.100
- Construed narrowly (a continuation or Part 2 not the same matter).

# DON'T TAKE IT PERSONALLY

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- For purposes of AS 39.52.180(a), routine processing of documents, general supervision of employees without direct involvement in a matter, or ministerial functions not involving the merits of a matter under consideration by an administrative unit ***do not constitute personal or substantial participation in a matter*** by a public officer. 9 AAC 52.100

# MAKE IT OFFICIAL

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- **“Official action”** means advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

AS 39.52.960(14)



# POST-STATE EMPLOYMENT EXCEPTIONS

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- Can contract with former agency.
- Can get public interest waiver (approved by your agency and the Attorney General).
- AS 39.52.180(b)(c)

# POST-STATE EMPLOYMENT

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## One-Year Bar on Lobbying

- (1) governor;
- (2) lieutenant governor;
- (3) head or deputy head of a principal department in the executive branch;
- (4) director of a division or legislative liaison within a principal department in the executive branch;
- (5) legislative liaison, administrative assistant or other employee of the Office of the Governor or Office of the Lieutenant Governor in a policy-making position;
- (6) member of a state board or commission that has the authority to adopt regulations, other than a board or commission named in AS 08.01.010;
- (7) member of a governing board and executive officer of a state public corporation.
  - may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving that position. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission.

# MISUSE OF INFORMATION

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- AS 39.52.140
  - Applies to current and former public officers
  - A public officer may not:
    - disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.
    - disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law.

# IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS.

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- The Ethics Act prohibits you and members of your immediate family from receiving certain state grants, contracts, leases, and loans.
- Neither you nor any member of your immediate family may attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan **if you may take or withhold official action affecting the award, execution, or administration of that grant, contract, lease, or loan.**

# IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS.

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- Some exceptions:
- You and your family members may have interests in **competitively solicited grants**, contracts, and leases, unless
  - you work for the administrative unit awarding the grant, contract, or lease;
  - you work for the administrative unit for which the grant, contract, or lease is awarded; or
  - you actually take official action on the award, execution or administration of the grant, contract, or lease.



# IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS.

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- Some exceptions:
- You and your immediate family members may have interests in a
  - **loan that is generally available to members of the public, and**
  - **subject to fixed eligibility standards.**
- As long as you do not actually take or withhold official action affecting the award, execution, or administration of that loan.

# IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS.

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- Hypothetical:
- Suppose your daughter wants to apply for a grant from your agency and your normal duties include serving on the committee that awards those grants. May she apply for the grant?
  - No, unless the grant is competitively solicited, and
  - you take no official action with respect to the award, execution, or administration of the grant; or
  - your designated ethics supervisor determines that your committee duties can be reassigned.

# AIDING IN A VIOLATION

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- The Ethics Act prohibits you from knowingly helping another person covered by the Act to violate the Act.

# POLITICAL PURPOSES

## AS 39.52.120

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- Cannot use state funds, equipment, or facilities for *partisan political purposes*.
- These are activities that are intended to benefit or harm a candidate, potential candidate, political party or group.

# THE ACT AS SWORD AND SHIELD

## THE SHIELD

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- Ethics Act can be used as a sword, but also as a shield to protect you.
- Provision that if you seek advice, with full disclosure of facts, and follow that advice, you are protected.
- Caveat: Any ethics complaints against G and LG go straight to the Personnel Board and are assigned to independent counsel.



# REPORTING PROVISIONS

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- The Ethics Act works by relying on you to report your own gifts, outside employment, and interests in state grants, contracts, leases, and loans.
- The Ethics Act also relies on you to report to your designated ethics supervisor any situation that might produce a violation of the Act.
- If you have doubts about what the Ethics Act requires you to do in a particular situation, you should **seek advice from your designated ethics supervisor.**

# REPORTING PROVISIONS

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It doesn't matter much which form you use.

What matters is

- **recognizing** when there is an ethics issue;
- **reporting** it and asking for advice;
- **waiting** for that advice; and
- **following** the advice.

## 40 REPORTING PROVISIONS

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A **member of a board or commission** whose involvement in a matter might violate the Ethics Act must **disclose** that matter:

- (1) **on the public record** and
- (2) **in writing** to both the designated ethics supervisor and the attorney general.



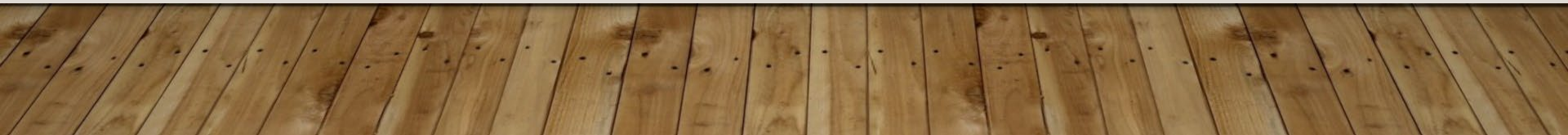
## 4 | REPORTING PROVISIONS

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When a **member of a board or commission** discloses a potential violation of the Ethics Act, the designated ethics supervisor will determine whether the member's involvement violates the Act.

The designated ethics supervisor will provide copies of the **written determination** to the member and to the attorney general.

Like the disclosure itself, the designated ethics supervisor's determination is also disclosed at a meeting on the public record.



## 42 REPORTING PROVISIONS

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If any member of the board or commission **objects** to the designated ethics supervisor's determination, or if the **chair** discloses a potential Ethics Act violation, the members present at a meeting (other than the disclosing member) must **vote** on whether the disclosing member may participate in the matter.

## 43 REPORTING PROVISIONS

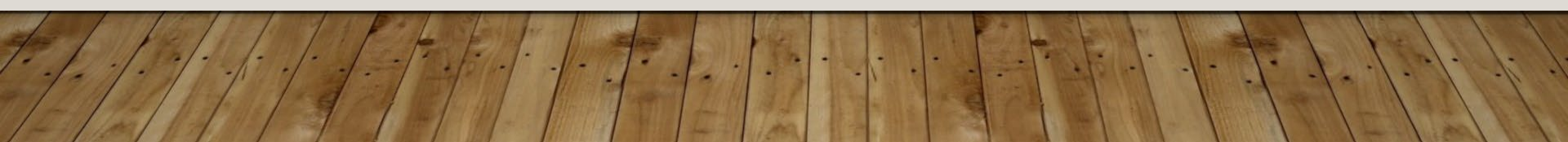
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- If a **majority** of the members voting determines that a violation of the Ethics Act would exist, **or**
- the **chair rules** that there would be a violation and **no one objects** to the chair's ruling,
- the member making the disclosure **must refrain from voting, deliberating, or participating** in that matter.

## 44 REPORTING PROVISIONS

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A disclosing member who violates the Ethics Act in taking or withholding an action will not be liable for the violation **if**

- the member **acted in accordance** with the chair's (or board or commission's) determination;
  - the member **fully disclosed** all relevant facts to the chair (or board or commission); and
  - the **attorney general has not advised** the member, chair, board, or commission that the action violates the Ethics Act.
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## 45 REPORTING PROVISIONS

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A designated ethics supervisor may request **advice from the attorney general** when determining whether an employee – or member of a board or commission – is involved in a matter that might lead to a violation of the Ethics Act.

Boards and commissions may also seek advice from the attorney general when making those determinations.

## 46 COMPLAINT PROCEDURES

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The Ethics Act also provides procedures for filing complaints alleging violations of the Act.

A complaint must

- be in **writing**;
- be signed **under oath**; and
- contain a **clear statement** of the details of the alleged violation.

## 47 COMPLAINT PROCEDURES

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- Complaints against the Gov, LG, or AG are referred to the Personnel Board and are reviewed by independent counsel.
- For all other public officers, the attorney general (or independent counsel in some cases) **reviews** each complaint to determine whether
  - it is **properly completed**; and
  - contains allegations that, if true, would **establish a violation** of the Ethics Act.
    - If the complaint does not provide probable cause for a violation, then the complaint is dismissed with notice to parties.

## 48 COMPLAINT PROCEDURES

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A complaint and all other documents and information regarding the investigation of a complaint are **confidential** unless

- the person named in the complaint **agrees** to make the complaint public; or
- the attorney general initiates **formal proceedings** by serving an accusation on the person named in the complaint.



# BUT REMEMBER: **THE SHIELD**

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- Provision that if you seek advice, with full disclosure of facts, and follow that advice, you are protected.



# STATE EMPLOYEES' RIGHTS

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- The state cannot restrict or attempt to restrict after-working-hours statements, pronouncements or other activities, not otherwise prohibited by law or personnel rule, of any employee of the state, if the employee does not purport to speak or act in an official capacity. AS 39.26.010

# DON'TS

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- Don't use state equipment for political purposes (some exceptions)
- Don't use state funds for political purposes
- Don't use state personnel for political purposes (except their off time)
- Don't use state time for political purposes (except G and LG)

# WHO TO CALL

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- Matt Stinson, Ethics Counsel 269-6612
- Jennifer Williams, Ethics Counsel Paralegal, 375-7774
- Your DES.